

Tri-Cities Nonprofit and Charities Roundtable
Thursday, 3 August 2006, 9:00 am -11:00 pm
Kennewick United Way Building

Minutes of the Roundtable

Seated at the moderated discussion table:

1. Secretary of State Sam Reed
2. Rebecca Sherrell, *OSOS Charities Program Manager*
3. Mike Ricchio, *OSOS, Director of Corporations*
4. Shane Hamlin, *OSOS, Legislative Liaison*
5. Sharon Ghiglione, *The Volunteer Center*
6. Judy Bell, *The Volunteer Center*
7. Roger Krebs, *Tri-Cities Residential Services (TCRS)*
8. Dennis Loman, *LeMaster and Daniels, PLLC*
9. Ralph Conner, *LeMaster and Daniels, PLLC*
10. Capt. Raymond Erickson-King, *The Salvation Army*
11. Kathleen McDonald, *Enterprise for Progress in the Community (EPIC)*
12. Sue Delucchi, *Safe Harbor Crisis Nursery*
13. Sandi Newland, *Sandra Newland, CPA*

Roundtable convened.

Sharon Ghiglione (The Volunteer Center) welcomes all attendees. Notes that she and the Tri-Cities community are happy to have the Secretary of State gather those in the nonprofit sector to provide feedback and input on the proposed legislation.

Floor given to Secretary of State Sam Reed.

Secretary of State Sam Reed welcomes all attendees and thanks them for their attendance. He introduces the staff members from his office that are working on the project [Mike Ricchio, Shane Hamlin, and Rebecca Sherrell].

Secretary Reed provides brief background information on the bill. He notes that a few years ago, there was a lot of discussion about nonprofit corporations soliciting funds from the public. The discussion received visibility through the fraudulent activities of some organizations during the aftermath of September 11th and, later, Hurricane Katrina. He notes that there has also been heightened sensitivity and attention from the public regarding where and how their donated funds are utilized.

He encourages giving, noting that volunteerism and donating money is a wonderful tradition in America. He comments that America is unlike other countries in that volunteering and participating in the community is so widespread.

Secretary Reed comments that legislation, in part, is based on a study done by the Independent Sector, called "Strengthening Accountability, Transparency, and Governance in the Charitable Organizations." The report made the point that accountability is crucial to the credibility of the sector. Transparency and governance are also necessary to maintaining public trust, which is

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critical to fulfilling an organization's mission. Secretary Reed explains that last year, the Office of the Secretary of State began talking with the Washington Society of CPAs, the Washington Bar Association, and legislators to develop legislation. He notes that his office received feedback from the nonprofit sector around the State of Washington and learned that not all organizations agreed with parts of the bill. He comments that the Office of the Secretary of State put further development of the legislation on hold until the office could talk with organizations in the sector. He notes that the roundtables that have been convened during the interim have been quite valuable. He asks Shane Hamlin from the Office of the Secretary of State to explain how the roundtable should proceed.

Floor given to Shane Hamlin, Legislative Liaison, OSOS

Shane Hamlin (OSOS) invites and encourages frankness in an open discussion. He notes that the goal of the legislation is to build sustainable public trust. He asks attendees to contribute their comments here at the roundtable, and also through the online feedback form on the Secretary of State's website. He explains that after all roundtable are completed, the Office of the Secretary of State will compile an executive summary of the major findings from each roundtable. He notes that a panel comprised of attendees from the roundtables will be convened to review the findings and continue to develop the legislation.

Floor is given to Mike Ricchio, Director of Corporations, OSOS

Mike Ricchio (OSOS) notes that the Office of the Secretary of State has been operating the roundtables in an informal way, and encourages attendees to make comments.

He provides background information about the Corporations Division and Charities Program, noting that there are about 50,000 registered nonprofit organizations in the State of Washington and, of those, 12,000 are registered with the Charitable Solicitations Program. The Charities Program administers two statutes, 19.09 which addresses charitable solicitations, and 11.110 which addresses charitable trusts.

He clarifies that the legislation does not address all nonprofit organizations in Washington State, only those soliciting from the public in excess of \$25,000 [RCW 19.09]. He notes that the number of these organizations is a fairly small slice of the 50,000 total organizations registered in the state.

Judy Bell (The Volunteer Center) asks a question about exempt versus non-exempt organizations. She notes that in the first Bush administration, he encouraged giving to faith-based organizations. She comments that there has been confusion in the sector about exemptions.

Mike Ricchio (OSOS) comments that her question is a great transition to a discussion of the proposed clarification of the definition of religious activities. Organizations exempt from registration are entities solely operating for religious purposes; if the organization is solely a

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church, it is exempt from registration. He notes that in the roundtables, the Office of the Secretary of State has heard that the language in the bill is consistent with the language that lawyers for faith-based organizations are using as well. He comments that one of the most common questions that the Charities Program receives is “do I have to register?”

Rebecca Sherrell (OSOS) clarifies the definition of a religious organization. She notes that if the organization is conducting charitable activities like housing the homeless or feeding the hungry, which goes beyond faith-based activities of advancing a religion, then the organization is required to register.

Secretary of State Sam Reed notes that he thinks it is important to make this distinction so that people who donate funds know their money is not necessarily going to a church, but rather to community services.

Sue Delucchi (Safe Harbor Crisis Nursery) asks if the only way an organization is exempt, is if it is exclusively religious.

Secretary of State Sam Reed clarifies that if, like the Salvation Army, the organization is part religious and part charitable, then the organization is usually filed as two sections – one that is registered because of its charitable activity, and one section that is exempt based on its exclusive religious nature.

Roger Krebs (TCRS) asks if, in the definition of charitable organizations, the office intentionally does not include qualifiers used in 501 (c) 3.

Mike Ricchio (OSOS) explains that not all nonprofit organizations are charities. Not including “501 (3) c” makes it a broader definition.

Roger Krebs (TCRS) clarifies that if a donor is looking for a tax exemption, they need to be looking for a 501 (c) 3 organization.

Mike Ricchio (OSOS) confirms and moves the discussion to the audit provision. He prefaces the audit requirement discussion, noting that it is also tied to the board review requirement in the bill. He notes that the term “audit” and the \$1 million threshold were chosen because the independent sector recommended these as best practices. Mike Ricchio explains that the Independent Sector Report was compiled by using national input, the panel’s recommendations were made to U.S. Senator Grassley.

Secretary of State Sam Reed reads the section of the Independent Sector Report that discusses the audit: (Executive Summary, page 5, number 4)

“Congress should require charitable organizations with at least \$1 million or more in annual revenues to conduct an audit and attach audited financial statements to their IRS Form 990 series returns, and those with annual revenues

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between \$250,000 and \$1 million to have their financial statements reviewed by an independent public accountant.”

Mike Ricchio (OSOS) comments that the Office of the Secretary of State did discuss with the CPA Society the language in the legislation. He notes that if attendees have been reading the minutes they will see a continued discussion about what the language means. He explains that at the roundtables, the Office of the Secretary of State discussed many options; he notes that another topic of considerable discussion is the \$1 million threshold.

The Office of the Secretary of State has heard from, for example, land trusts and organizations that receive only in-kind donations. The Office of the Secretary of State is now more interested in looking at total solicited funds from the public, rather than total revenue.

Secretary of State Sam Reed notes that at the Bellingham roundtable, there was a lot of support expressed for a financial review rather than an audit, which costs more money.

Sue Delucchi (Safe Harbor Crisis Nursery) notes that her organization’s CPA has suggested an audit every 3-5 years. She asks if that is a possibility.

Mike Ricchio (OSOS) notes that it is a really good suggestion, that the office has heard that suggestion [3-5 year stagger of audit] from other nonprofit organizations as well.

Ralph Conner (LeMaster and Daniels) comments that it is a good, positive step to look at the \$1 million threshold based on total solicited funds. He notes that an audit can run 3-5% of an organization’s operating budget, which can really be a strain on smaller organizations. He explains that an audit looks at historical information, and suggests that the intention of Office of the Secretary of State is to be forward looking. He comments that much of the information that the Office of the Secretary of State is looking for is on the IRS Form 990 already. The IRS Form 990 is not always filled out properly. He suggests more stringent compliance with the IRS Form 990; he believes this is a better step than an audit.

Secretary of State Sam Reed asks what Ralph Conner if he thinks an IRS Form 990 reveals more than an audit or review.

Ralph Conner (LeMaster and Daniel) suggests that there would be disclosure of more useful information on the IRS Form 990 than in a review or an audit.

Mike Ricchio (OSOS) notes that at the Bellingham roundtable, there were suggestions about having a CPA fill out the IRS Form 990. He comments that this is a consideration

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that is being looked into. He comments that the Office of the Secretary of State values an independent review, rather than self-reporting as currently done on the IRS Form 990.

Ralph Conner (LeMaster and Daniels) notes that another positive discussion he has seen in the minutes [from previous roundtables] has been the educational training element for board members.

Roger Krebs (TCRS) asks if the \$1 million threshold is strictly limited to solicited funds or is it total revenue.

Mike Ricchio (OSOS) acknowledges that definition is something that the Office of the Secretary of State is working on; that the text of the bill still refers to total revenue.

Secretary of State Sam Reed notes that through the roundtables, the Office of the Secretary of State has learned that focusing on solicited funds is really what the office is after. He notes that the mission of the Office of the Secretary of State is to protect the public and ensure that the public's donated money is used properly.

Dennis Loman (LeMaster and Daniels) notes that he thinks that the focus needs to be on the educational component because even with a \$1 million revenue threshold, you might not find those organizations that are deceiving the public. He suggests the focus be on identification [of bad actors] and education. He suggests that the focus has to be in a different direction to catch those deceiving the public.

Judy Bell (The Volunteer Center) agrees that organizations should have an audit. She believes that an independent, full audit is good for an organization to build credibility. She agrees, though, that it should not be done every year. She suggests having the audit requirement on a sliding scale depending on the size of the organization.

Mike Ricchio (OSOS) asks the attendees how many organizations already have an audit done if the organization solicits more than \$1 million from the public.

There was general agreement that most organizations already do an audit for funds solicited over \$1 million.

Dennis Loman (LeMaster and Daniels) comments that if it is a legitimate organization, he would speculate that 90% of organizations soliciting more than \$1 million from the public complete an audit.

Ralph Conner (LeMaster and Daniels) agrees.

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Sue Delucchi (Safe Harbor Crisis Nursery) notes that in order to receive a grant from the United Way, the United Way requires an audit of an organization if the organization raises more than \$100,000.

Kathleen McDonald (EPIC) notes that her organization has an \$18 million budget, so most of the requirements in the bill are things that her organization already does. She comments that she is glad to *not* see a requirement [that was circulating at the Congressional level] to change auditors every few years. This requirement would be a particular hardship on small nonprofits. She notes that she is glad to not see that in this bill.

She also echoes support for educational training, noting that an audit is a huge expense. She notes that training is a critical element and that organizations should be required to have training.

She notes that public trust is a broader issue.

Roger Krebs (TCRS) asks if the audit or financial review would look at total revenue or solicitations because the bill [current draft] discusses revenue.

Mike Ricchio (OSOS) notes that the bill has not been updated to reflect roundtable comments.

Shane Hamlin (OSOS) explains that when the next new draft comes out, it will be posted on the website. At that time, attendees can see modified legislation that reflects the roundtable comments reflected.

Mike Ricchio (OSOS) notes that he hopes to have a panel with enough expertise to have terminology reflect the intentions of the Office of the Secretary of State.

Dennis Loman (LeMaster and Daniels) comments that the definition for requiring an audit is a slippery slope in terms of what monies would be included and what monies are not. He cautions offers regarding a stringent definition for an audit because of the concern that [federal] government requirement standards will also affect the requirements for organizations. He also reiterates what Ralph [Conner] noted - that an audit is a regurgitation of historical information and may not be the best way to find the information that the Office of the Secretary of State is looking for.

Mike Ricchio (OSOS) notes that the Office of the Secretary of State is approaching this legislation with the principal of do no harm. He notes that the intention is not to add to the administrative burden on nonprofit organizations.

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Roger Krebs (TCRS) asks if the Office of the Secretary of State gets calls about the credibility of an organization, and if the office provides ratings on organizations.

Rebecca Sherrell (OSOS) replies that the Charities Program does receive questions about credibility and provides the public with information that they have about an organization.

Mike Ricchio (OSOS) comments that attendees can imagine the slippery slope that the Office of the Secretary of State would face if the office said which organizations are good and which organizations are not; he notes that they only pass on information for the public to make their own decision.

Sandi Newland (Sandra Newland CPA) comments that she is glad to hear the discussion about the \$1 million threshold. She notes that one of her clients is a hospice that struggles to recruit and retain nursing staff; she also notes that for organizations it is more important to have money for its mission.

Secretary of State Sam Reed notes that the audit requirement is also tied to a board review requirement.

Dennis Loman (LeMaster and Daniels) asks if the requirement is tied to having boards sign off on the IRS Form 990 or on a financial review.

Secretary of State Sam Reed asks if having the IRS form 990 prepared by a CPA is better than it being review by a CPA, or vice versa?

Ralph Conner (LeMaster and Daniels) comments that if it is reviewed by a CPA, the CPA is only making sure that things are on the right line; there is no way to tell whether the background information entered on the IRS Form 990 is accurate. He comments that the information is easier to extract on an IRS Form 990 than on an audit because sometimes an audit can get caught up in technical language that a lay person will not understand.

Secretary of State Sam Reed asks about having different levels in the audit requirement; for example, organizations over \$2 million would have an audit, organizations with solicitations between \$1-2 million would have a financial review, those organizations with less than \$1 million in solicitations would have a CPA prepared IRS Form 990. He asks if this is a practical idea.

Sue Delucchi (Safe Harbor Crisis Nursery) suggests that because there are such discrepancies in the size of organizations that having levels would be practical.

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Ralph Conner (LeMaster and Daniels) notes that the threshold already created a tiered system.

Sue Delucchi (Safe Harbor Crisis Nursery) asks if having a CPA on the board prepare an IRS Form 990 counts as an independent party for review.

Dennis Loman (LeMaster and Daniels) notes that it would not be an independent review if a CPA board member conducted it for the organization. He comments that having a CPA on the board would help keep finances in order.

Judy Bell (The Volunteer Center) comments that she really thinks that the focus needs to be on the threshold. She also continues to support the idea that an independent review is important. She notes that, as an organization, she would want an independent review for creditability.

Kathleen McDonald (EPIC) notes that in the discussion about the misuse of public trust, the size is not a factor. The smallest misuse of public funds and the loss of public trusts spills over and affects all nonprofits.

She comments that she has been looking to have some kind of national accreditation for her organization's board to build credibility. She notes that if there is a level of accreditation met, it is valuable for accountability as well.

Secretary of State Sam Reed comments that at all the roundtables a consistent message that the Office of the Secretary of State has heard is about education.

Roger Krebs (TCRS) asks if there could be a document that accompanies the registration for an organization that asks if the board has received any training.

Secretary of State Sam Reed notes that one thing his office has tried to do is require the board to review the financial report of the organization. He comments that attendees would be surprised at how many organizations do not currently do this.

Roger Krebs (TCRS) suggest that Office of the Secretary of State also identify items that should be a in training for program for boards.

Kathleen McDonald (EPIC) suggests having requirements for the board treasurer specifically.

Secretary of State Sam Reed comments that one proposal that has come up at the roundtable sessions has been raising the registration fee for organizations and having those moneys set aside for education and training.

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Sharon Ghiglione (The Volunteer Center) notes that she is really interested in the discussion about board education. She asks for thoughts about what the board educational training might entail.

Secretary of State Sam Reed notes that the Office of the Secretary of State manages elections, Washington State Archives, and the Washington State Library. Each of these divisions has educational components; for example, the elections division conducts training to county election officials about proper election procedures. It would improve credibility and trust of charities and nonprofit organizations to have a program to train board members and staff of the organization. He notes that it seems like it would really be helpful, especially for small organizations. Training would focus on governance procedures and board responsibility.

Sue Delucchi (Safe Harbor Crisis Nursery) asks if there is anything to prohibit sending out charity registration with the registration packet for nonprofit organizations. She comments that if these two registration packets came together routinely, it would be easier and there would be more organizations that registered.

Mike Ricchio (OSOS) notes that this idea is a good suggestion and an extension of what is planned for the online filing for charity organizations; for electronic filing, he notes that the plan is to have links to related information and documents.

Rebecca Sherrell (OSOS) notes that the dilemma with mailing them out simultaneously is the filing timeframe for nonprofit corporations is based on the organization's date of incorporation, while charity renewals are based on the organization's fiscal year end. The charity renewal period is consistent with the IRS 990 filing deadline.

Sue Delucchi (Safe Harbor Crisis Nursery) comments that her organization contracts with a nonprofit fundraising organization that is registered with the Office of the Secretary of State that conducts the fundraising of her organization. She asks if this is a different relationship than a commercial fundraiser.

Rebecca Sherrell (OSOS) comments that it is unusual, but that the definition of a commercial fundraiser is any entity that receives compensation to raise funds for you [the hiring organization].

Sue Delucchi (Safe Harbor Crisis Nursery) comments that more and more, small nonprofit organizations are going have to have to turn to external organizations to raise funds.

Secretary of State Sam Reed encourages nonprofit organizations to be vigilant in finding and using commercial fundraisers, noting that the organization needs to be sure that it is not getting itself into a bad deal in the effort to raise funds for its mission.

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Kathleen McDonald (EPIC) notes that her interest is to build and maintain public trust, and whatever the Office of the Secretary of State can do to prove that her organization has public trust is in her interest. She comments offering a certification of the board would be a beautiful piece of paper that she could show to federal grantors that the organization is further credible and valuable. She notes that being able to demonstrate the certification of her organization's board improves the success of her agency.

Sue Delucchi (Safe Harbor Crisis Nursery) supports the idea of a certification for board members. She comments that, on the topic of embezzlement, the law is to protect the public by reporting a certain amount that is donated; she notes that embezzlement can be costly financially, but also in terms of credibility for the organization.

Sharon Ghiglione (The Volunteer Center) comments that as a small nonprofit [her organization is a small nonprofit], it is nice to know that we are already doing all of the proposed requirements!

Roger Krebs (TCRS) asks a question about page 10, section 5; he asks what the purpose of having the information of a commercial fundraiser collected.

Raymond Erickson-King (The Salvation Army) asks if this reporting is an official notification, like a permit.

Rebecca Sherrell (OSOS) explains that the reporting does not serve as a permit; it is only a way for the Office of the Secretary of State to make sure that both entities [the organization and the fundraiser] are aware of the relationship and expectations between the two.

Roger Krebs (TCRS) notes that the Office of the Secretary of State is asking for information from the nonprofit, but nonprofit organizations are not clear about what documentation the organizations are getting back from the Office of the Secretary of State.

Rebecca Sherrell (OSOS) notes that it is addressed in chapter 19.09; the proposed bill does not include the entire chapter. There is a section in the chapter that deals with what the Secretary of State provides to nonprofit organizations.

Sue Delucchi (Safe Harbor Crisis Nursery) asks if it is well articulated which WACs and RCWs need to be read if the organization is registering as a corporation.

Mike Ricchio (OSOS) notes that he is not sure how clear it is on the e-file. He comments that the office will check on that.

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Sharon Ghiglione (The Volunteer Center) asks if there is anything other than the audit requirement to improve enforcement.

Mike Ricchio (OSOS) comments that there is a part of the bill that discusses a fund for enforcement from the Attorney General.

Sharon Ghiglione (The Volunteer Center) asks if that enforcement fund only applies to the same small slice of organizations that is the focus of the audit requirement.

Mike Ricchio (OSOS) clarifies that it applies to all organizations.

Judy Bell (The Volunteer Center) notes that section 9 of the bill addresses enforcement and accountability.

Secretary of State Sam Reed asks if there are any last comments.

Ralph Conner (LeMaster and Daniels) notes that having an audit or a review is not a bad thing; it just may not be the right way to get to the information that the Office of the Secretary of State seeks.

Secretary of State Sam Reed thanks all attendees for coming and Sharon Ghiglione for organizing the roundtable. He notes that the minutes will be posted on the website and keep attendees in the loop on further developments.

Roundtable adjourned.